#### **MINUTES**

# AUDIT SUBCOMMITTEE OF THE LEGISLATIVE MANAGEMENT COMMITTEE

The Audit Subcommittee of the Legislative Management Committee met in Room 131, State Capitol Building, Salt Lake City, Utah, June 23, 2003, from 2:00 p.m. until 3:45 p.m.

Committee Members Present: Speaker Martin R. Stephens, Co-Chairman

Excused President Al Mansell, Co-Chairman

Senator Mike Dmitrich

Representative Brent Goodfellow

Legislative Audit Staff: Wayne L. Welsh, Auditor General

John M. Schaff, Deputy Auditor General

Rick Coleman, Audit Manager
Tim Osterstock, Audit Manager
Leslie Marks, Audit Supervisor
Darin Underwood, Audit Supervisor
Deanna Herring, Sr Performance Auditor
Brian Dean, Sr Performance Auditor
David Gibson, Sr Performance Auditor
Aaron Eliason, Performance Auditor
Kade Minchey, Performance Auditor

Kade Minchey, Performance Auditor Lynda Maynard, Recording Secretary

Other Interested Parties: Robin Arnold-Williams, Exec Director, DHS

Camille Anthony, Exec Director, DAS

Rod Marrelli, Exec Director, State Tax Commission Dee Talbot, Div Director, Taxpayer Services, State Tax

Commission

Comm Pam Hendrickson, Chair, State Tax Commission

Comm R Bruce Johnson, State Tax Commission Comm Marc Johnson, State Tax commission

Dr Richard Austin, Chair, Board of Directors, Davis Mental Health (DMH)

David Broadbent, Board of Directors, Valley Mental Health (VMH)

Penny Atkinson, Valley Mental Health Kelly Atkinson, Atkinson Consulting

Bruce Cummings, Valley Mental Health Board Member

Doug Kettle, CFO, Valley Mental Health

Kerry Steadman, Director, DHS

Alan Dayton, Deputy Mayor, Salt Lake County

Stephen W Fulling, Director, Inform Tech Services Vaughn C Emitt, Dept of Human Services (DHS) Kelly W Colopy, Research Consult, DHS Carol Sisco, Public Information Officer, DHS Representative Judy Buffmire Mark Walsh, Utah Assoc. of Counties Joette Langianese, Grand County Council Member Mark Andrews, Legis Research and General Counsel Richard North, Legis Research and General Counsel Stephen Jardine, GOPB Thor Nilsen, Legislative Fiscal Analyst Cheryl Buchta, Standard Examiner Kirsten Stewart. Salt Lake Tribune J Santini. Salt Lake Tribune Amy Bryson, Deseret News Jill Atwood, *KSL-TV* And Others As Listed

#### 1. Call to Order

Speaker Stephens called the meeting to order at 2:00 p.m.

#### 2. Approval of Minutes

Representative Goodfellow made a motion that the minutes from the April 17<sup>th</sup> meeting be approved. The motion passed unanimously.

#### **3a.** A Performance Audit of Utah's Local Mental Health System (Report #2003-05)

Presented by Leslie Marks, Audit Supervisor

State agencies, local mental health authorities (LMHAs), and mental health centers (MHCs) need to provide better assurance that the more than \$132 million in primarily public funds entrusted to the MHCs are being used efficiently and effectively and as dictated by law, policy, and contract terms. Oversight of Utah's local mental health system needs to improve at both county and state levels to ensure that these public funds are used appropriately.

The MHCs may need to improve accountability and adherence to contract provisions and state laws. Improved, coordinated monitoring will provide more information to the governmental units sharing oversight responsibility; better reporting is important to enable assessment of whether the locally operated MHCs efficiently and effectively use the funds they receive from multiple sources.

## State and County Oversight of MHCs

### **Needs to Improve**

While overall MHC expenditures appear to be appropriate, the lack of detailed information on some activities warrants more oversight by county authorities and state funding agencies. Effective LMHA oversight is hampered by misperceptions among some county officials as to their responsibility and authority over the MHCs. For their part, state funding agencies can do a better job of providing policy direction as well as better coordinating between themselves. The main points of Chapter II include the following:

- LMHAs need to improve oversight of the MHCs
- MHC information provided to oversight authorities can improve as can LMHA review of that information
- State policy direction is needed for the development of compliant MHC administrative policies

**Recommendations** include developing ongoing training for LMHAs, developing a common statewide structure for reporting from MHCs to LMHAs, clarifying contract language, developing state level policy on MHC administrative areas, and improving MHC reporting to the state.

### Policy Improvements Needed for Untraditional Activities

Public policy clarification is needed for mental health center (MHC) involvement in activities other than direct mental health care. One MHC in particular is involved in projects that extend beyond traditional mental health services. The MHC, not the local mental health authority (LMHA), initiated the move into these untraditional activities. This involvement raises concerns about the best use of scarce public funds, a determination that should be made by the LMHA, not its contractor. Chapter III makes the following main points:

- Policy is needed on MHC involvement in untraditional and non-services investment practices.
- MHC funds support the operations of some external, affiliated nonprofit organizations, including a foundation and a statewide mental health professional association.

**Recommendations** include developing state level policy on MHC involvement in outside, non-services activities, increasing reporting and oversight requirements for those activities in contracts, requiring MHC foundation compliance with state investment guidelines, and ensuring LMHA oversight of the professional association.

# Some Administrative Practices Fail to Ensure Best Use of Public Funds

A number of administrative practices at MHCs are of concern. These practices range from the development of employee retention incentive policies to inadequate procurement and contracting controls at some MHCs. Specifically, these main points are covered in Chapter IV:

 A retention incentive plan implemented by one MHC raises concerns because of the increased compensation of a small group of executive staff provided through retirement benefits not available to other MHC employees or to state employees

- Another retirement-related concern is the enrollment of non-MHC employees in the state retirement system by processing non-employees' payroll through an MHC payroll system
- Procurement, contracting, record keeping, dual employment, and conflict of interest controls all need improvement

**Recommendations** include directing the Utah Retirement Systems to study the issues raised and report back to the Legislature, clarifying to the MHCs the necessity of following competitive procurement rules, and clarifying LMHA expectations of the MHCs regarding conflicts of interest and dual employment.

#### **Discussion following presentation:**

David Broadbent, Valley Mental Health Board Member, passed out a summary sheet of the VMH Board of Directors response to the Local Mental Health audit. It included the following points:

- VMH Board of Directors appreciates the Legislative Audit recommendations.
- The board will continue to work with oversight agencies to improve the mental health system.
- In order to address unmet critical mental health needs, our system must encourage the leveraging of dollars with other private resources.
- The Local Mental Health Authority (LMHA) directed VMH to pursue ways ot expand the public dollar to meet critical mental health community needs.
- VMH has demonstrated the importance and benefit of public and private partnerships in the provision of critical human services
- \$25,000,000 has been raised from non-government sources to benefit the individuals served.
- Without the services made possible by private money, individuals with severe mental illness would possibly be residing in institutions or jails, at significant cost to the State of Utah.
- VMH's accounting system tracks public and private money separately.
- VMH's revenue budget has increased by 40 percent in the last seven years.
- The LMHA contractually requires yearly production standards of VMH.

- With the above 40 percent budget increase, the production of mental health treatment services has increased by over 70 percent, and
- During this time period, the number of units of service produced has been 21 percent above the contracted requirements.

Robin Arnold-Williams, Executive Director, Department of Human Services, told the audit staff how much she appreciated their hard work and professional approach. She also said that the efforts of DHS's partners, the local mental health authorities and their provider agencies are very much appreciated.

Ms Williams continued by telling the Audit Subcommittee that the Department of Human Services and Division of Substance Abuse and Mental Health are supportive of the recommendations made in the audit and have initiated efforts to implement them. The Department of Human Services has initiated steps to provide updated information to all commissioners and elected officials to help them more fully understand their responsibilities. In addition, the following steps have been initiated,

- The Division is developing ongoing governance and monitoring required training for the State Board of Substance Abuse and Mental Health and local authorities.
- The Division has strengthened contract and governance oversight staff by increasing the level of expertise required and the scope of authority.

Dr. Richard Austin, Chairman of the Board of Trustees, Davis Behavioral Health, conveyed his appreciation and support for the recommendations made in the audit report. Dr. Austin said that DBH has begun to operationalize the recommendations relevant to them. Dr. Austin continued by making the following points:

- The degree of oversight by the Davis Behavioral Health Board of Trustees, in the mental health authority, are exceptional.
- The Board of Trustees is organized into subcommittees that review monthly the use of funds for their appropriateness and cost effectiveness.
- The Board of Trustees has volunteered over three hundred hours of service to Davis Behavioral Health in 2003.
- The management team of Davis Beahvioral Health is highly skilled.
- Mental health has evolved from direct institutionalization for those with minor ailments to where individual and group therapy is available to help the lives of those who are mentally handicapped or mentally ill.
- True hope of recovery for individuals suffering from mental illness is the hope of a meaningful and productive life through employment and housing.

Alan Dayton, Deputy Mayor, Salt Lake County, concluded the responses to the Local Mental Health audit by telling the Audit Subcommittee that Salt Lake County deliberately chose to privatize mental health services to capture the advantages that private enteerprise gives, such as creativity, efficiency ad flexibility. Some of the recommendations in the audit report will be very helpful to strengthen this relationship and assure adequate oversight.

Deputy Mayor Dayton said that Salt Lake County holds at least five public hearings with Valley Mentah Health to go over their budget and budget adjustments and review their plans. Valley Mental Health is doing an outstanding job. They have been able to manage the growth in services and generate the revenue through foundations and other creative ventures.

Representative Judy Buffmire told the Audit Subcommittee that it is important to know the audit teams look after the State's interest. Representative Buffmire said that, as a member of the Valley Mental Health Board, she know first hand that the board tries very hard to meet their obligations and hopes that they can continue to work together.

Wayne Welsh, Auditor General, made an observation that each level has a special interest. The local mental health provider has their own special interests, the counties have their interests at heart, and the State has its interests, as well. Mr. Welsh concluded by saying that the mental health centers are very dedicated and very hard working with a single focus; the county executives or elected officials have a broader focus and the State and Legislature, who has final decision making authority about funding and program scope, have an even greater breadth of responsibility. The whole idea is to work together to provide the services that are needed to everyone in the most cost-efficient way.

Motion: Representative Goodfellow made a motion that the **Performance Audit of Utah's Local** 

**Mental Health System** (Report #2003-05)) be accepted and sent to the Health and Human Services Joint Appropriations Subcommittee and the Health and Human Services

Interim Committee. The motion passed unanimously.

#### **3b.** A Review of the Division of Information Technology Services (Report #2003-06)

Presented by Janice Coleman, Audit Supervisor

At the request of the Executive Appropriations Committee, we reviewed three allegations concerning management operations within the Division of Information Technology Services (ITS). These allegations were bought forth by ITS employees who were concerned about the appropriateness of some management activities. The Department of Administrative Services (DAS) also looked into these allegations and initiated procedural changes as a result of their findings. Based on our review, we found the following:

Unjustified ITS Software Purchases Resulted in \$1.7 Million Misspent. The implementation of three products purchased in fiscal year 2002 is very doubtful. In all three cases, the purchases were made with little analysis done to insure the appropriateness of each purchase. An inadequate pre-purchase analysis increases the risk of making a purchase that is imprudent in some regard (e.g., departmental needs not met, costs unrecoverable). Further, all three purchases were procured in a non-competitive manner even though competition existed. When purchases are made in a non-competitive fashion, the state has a greater risk of not getting the best product for the best price.

Chief Technical Architect May Have Benefitted His Son with State Business. First, total ITS payments to Vendor D (the son's employer) rose from a yearly average of \$415,000 in fiscal years 1999 and 2000 to \$1.4 million in fiscal year 2001—the first year the chief technical architect's son was employed by this vendor. Second, the two questioned purchases, which totaled approximately \$1.1 million, were done quickly with an inadequate supporting analysis. Third, these purchases were procured through sole-source contracts which raise

questions. The chief technical architect (who is also an ITS deputy director) stated that the two purchases in question were coincidental with his son becoming Vendor D's state sales representative.

**Issuance of Gag Order Unlikely.** First, while two instances were identified at which a possible gag order was issued, different employees interpreted the messages conveyed differently. Second, of the thirteen ITS employees interviewed, only two (15 percent) believed that a gag order had been placed on ITS employees. Consequently, this issue was not pursued further.

#### **Discussion following presentation:**

Senator Dmitrich asked Janice if the issue regarding a "gag order" was validated. Janice told the Audit Subcommittee that they had talked with a number of people who had attended the meetings in question. The majority of those interviewed did not believe a "gag order" had been issued.

Camille Anthony, Executive Director, Department of Administrative Services addressed the specific concerns of the Division of Information Technology Services audit. Camille said that as soon as the allegations, identified in the audit, came to her attention, the Department of Administrative Services conducted their own internal audit and her department has already implemented some of the recommendations made in the audit.

Ms. Anthony said that the issue regarding the conflict of interest has been addressed and the Department has requested the vendor, identified in the allegation, to assign a different agent to work with ITS. This request has been accommodated and should alleviate any future concern about a conflict of interest.

Representative Goodfellow asked Camille if there was any follow-up on an ex-employee who tried to penetrate the security at ITS.

Camille told the Audit Subcommittee that the matter had been turned over to the Department of Public Safety, which is the usual protocol. No criminal action has been found but restitution for lost time by UII, who is the contractor involved, will be charged to the former employee.

Speaker Stephens questioned the large expenditures for the tape storage backup instead of a disk storage system.

Camille explained that the ideal place for the state to be is a move to disk storage; but currently it is not a realistic goal. Maintaining a tape storage is an appropriate decision.

Motion: Senator Dmitrich made a motion that the **A Review of the Division of Information** 

**Technology Services** (Report #2003-06) be accepted and sent to the Executive Appropriations Committee and the Public Utilities and Technology Interim Study

Committee. The motion passed unanimously.

Motion: Representative Goodfellow made an additional motion that the **A Review of the Division** 

of Information Technology Services (Report #2003-06) also be sent to the Information

Technology Commission. The motion passed unanimously.

# **3c.** A Review of Tax Commission Employee Incentives and Performance Awards (Report #ILR 2003-D) Presented by Darin Underwood, Audit Supervisor

We have conducted a limited review of employee incentives and performance awards. Some of the results include:

- Cash and administrative leaves incentives for calendar year 2002 totaled \$370,000 at the State Tax Commission.
- For 2001 and 2002, we found that 75 percent of all Tax Commission employees, on average, received a cash incentive.
- Finally, in 2002, an even higher percentage of employees received cash incentives, together with administrative leave. In one of the divisions, Taxpayer Services,
   99 percent of employees received incentives.

These findings present two concerns. First, it does not appear that incentives are based on criteria of exceptional performance; Second, these incentives come at a time of severe state budget shortfalls. Clearly, we believe that if state incentives and performance awards are administered correctly, not only are they appropriate but are essential for a healthy work environment. Such incentives should be significantly reduced in tight budget times and given with extreme care—based on exceptional productivity. We believe that this has not been the case at the State Tax Commission, particularly the Taxpayer Services. Taxpayer Services gave incentive awards to a large percentage of employees which, to us, seems to more closely resemble an automatic benefit than a selective incentive. At Taxpayer Services, we believe division management needs to review their incentive program known as the **Star Award** program and their performance agreement program known as the **Win-Win Performance Agreement** because both programs lack firm criteria and control—such as reviewing frequency at which the awards are given.

With the **Star Award** program, the policy states that employees can receive a **Star Award** for going above and beyond their normal job expectation. However, we believe the division gives **Star Awards** in cases where individuals are not necessarily going above normal expectations, work that normally occurs in other agencies without monetary recognition. For example,

- Individual A received a Star Award for filling a printer with paper and monitoring the fax and print out document basket.
- Individual D received a Star Award for helping cover the phones during the Christmas party.

These **Star Awards** consist of a cash award of \$40 per instance or 3 hours of administrative leave. For a person to receive such an award, he or she can be nominated by another employee and the supervisor can either deny or approve. We did notice the lack of one significant control in that the director of the division could not deny the award.

We are also concerned with the frequency of the **Star Award**, which had gone untracked. Neither Human Resource Management nor Taxpayer Services management had any data compiled when we initially approached

them.

These same concerns existed with the **Win-Win Performance Contract**. Because of concerns in these two areas, we looked at six state agencies and found that these state agencies have also been giving many incentive awards over the last two years, including cash incentives. We found that for calendar year 2001, cash incentives totaled \$1.1 million for these six agencies and the Tax Commission; also, for calendar year 2002 the cash incentives totaled just over \$900,000. The following shows an example of the percentage of employees receiving incentive awards:

- 1. Agency D has a low of 17% of the total employees receiving cash incentives
- 2. Agency C has a high of all employees, 100%, receiving incentives.

Most incentives from the six agencies and the Tax Commission were given in amounts under \$500. However, we still believe that some of the incentives shown could be excessive. We met with representatives from each of the six agencies, A - F, to review the data. We discovered there may be adequate justification for some of the larger incentive amounts and percentages. While these agencies generally concur with the data, we acknowledge that a detailed incentive audit has not been performed by our office. It is very likely, however, that this will occur as part of a larger state-wide audit.

In conclusion, as we stated earlier, we agree that employees should be awarded but only if their performance is exceptional. With such a high percentage of employees receiving cash incentives at the Tax Commission, as well as administrative leave, it is hard to believe that all these awards could be truly based on substantial criteria. Obviously, this is particularly a concern during troubled budget times.

We offer these recommendations:

- 1. We recommend that the legislature conducted a full audit of employee incentives, which has already been approved by the subcommittee.
- 2. We recommend that the Tax Commission and the Department of Human Resource Management review their employee incentives policy.

#### **Discussion following presentation:**

Speaker Stephens announced that the Audit Subcommittee has already requested an expanded audit of the Employee Incentives issue to be presented at a future Audit Subcommittee Meeting.

Rod Marrelli, Executive Director, State Tax Commission, addressed the concerns of the Audit Subcommittee. Mr. Marrelli stated that the Tax Commission has begun working on the recommendations in the audit report. He stated that.

- The Tax Commission is anxious to know what the parameters are and how they should be handling incentives.
- The Tax Commission has other incentive awards that are in line with the \$500 a year award for exceptional employees—10% of their employees receive this award.
- The current Tax Commission's policy on **Star Awards** is that the director signs off on the award and

then discusses the merits with the supervisors.

Mr. Marelli said that it is his responsibility to administer the State Tax Commission and he takes full responsibility for this burden.

Motion: Representative Goodfellow made a motion that the **Review of Tax Commission** 

**Employee Incentives and Performance Awards** (Report #ILR 2003-D) be accepted and referred to the Revenue and Taxation Interim Study Committee and the Commerce and Revenue Joint Appropriations Subcommittee. The motion passed unanimously.

#### **3d.** A Performance Audit of Allegations Against the Tax Commission (Report #2003-04)

Presented by Darin Underwood, Audit Supervisor

Despite several allegations made by a citizen group that the Tax Commission is mistreating taxpayers, we believe the Tax Commission is treating taxpayers fairly in the following areas we reviewed:

- First, we believe the allegation that the Tax Commission has an inadequate system of notifications is unfounded. We found no evidence of inadequate notification. In fact, the Tax Commission gives more notification than required by statute.
- Second, we believe the allegation that the Tax Commissioners are too adversarial with appeals is also unfounded. This conclusion is based on our review of the final disposition method used in taxpayer appeals over the last six years. This review showed that the vast majority of appeals (95 percent) are handled informally.

The citizen group also made several other allegations, but we did not respond further because we believe the group lacked both credibility and lacked supporting evidence for their allegations. They lacked credibility by misinterpreted laws, citing nonsensical arguments, and appearing to be challenging taxes outright. Although the group promised supporting case examples, which they claimed would show Tax Commission mistreatment, they never produced the cases.

In addition, we had allegations from internal staff that preferential treatment is being given to select taxpayers by some Tax Commission management. However, our review could not find sufficient evidence to support these claims. So, we reasonably conclude that preferential treatment is generally not occurring at the Tax Commission.

Overall, it is our view that taxpayers, both compliant and non-compliant, are generally treated fairly by the Tax Commission in these three areas we reviewed.

#### **Discussion following presentation:**

Representative Goodfellow told those in the audience that he hoped this audit would send a message to those who need to consider the consequences of not paying taxes; that it will not be tolerated and that they are not above the law.

Pam Hendrickson, Chair, State Tax Commission, told the Audit Subcommittee that the Tax Commission appreciates

the audit not just because it makes the Tax Commission look good, but because it is important to have others view their process. Ms. Hendrickson said that the Tax Commission realizes that it is important to track their appeals process and they have created new codes and put together a new system that will track the disposition of all their cases.

Motion: Senator Dmitrich made a motion that the **Performance Audit of Allegations Against the** 

**Tax Commission** (Report #2003-04) be accepted and referred to the Revenue and Taxation Interim Study Committee and the Commerce and Revenue Joint Appropriations

Subcommittee. The motion passed unanimously.

#### 4. Audit Requests

Wayne Welsh, Auditor General, told the Audit Subcommittee that his office should have two audits ready to be presented in August.

Mr. Welsh reminded the Audit Subcommittee that they had requested his office to conduct some initial work and information to be gathered with reference to the audit request for Centrally Assessed Property Valuations. He gave the Subcommittee members a memorandum explaining the issues and the information that had been gathered to date.

After discussing the information presented, the Audit Subcommittee determined that it would be best to hold the request for an audit of Centrally Assessed Property until further discussion with the Tax Commission.

Speaker Stephens asked Mr. Welsh if some of the audit requests listed under "future audits" could be deleted as some requests were very old. Speaker Stephens specifically asked if the audit request for Education Association Activities could be removed.

Mr. Welsh told the Audit Subcommittee that he had discussed this request with Senator Wright who had requested that they look at this issue again. Senator Wright had asked that the Legislative Auditor's Office hold this request until current contract negotiations were completed.

Motion:

Senator Dmitrich made a motion that the requests for audits of Property Tax Exemptions, the Legacy Highway issue, Decentralization of the State Office of Education and the Medicaid Dental Program be removed from the lists of audit requests . The motion passed unanimously.

#### 5. Adjournment

Speaker Stephens adjourned the meeting at 3:45 p.m.